XI-B.C—78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CrA No 978 सन् 200 |

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: Dukhuram Sahu @ Bendram Sahu, aged 42 years, S/o Bisahu Ram Sahu, R/o village Karan Kapa, Presently R/o Chulghat Road, Takhatpur, Police Station Takhatpur, District Bilaspur (CG)

-Versus-

RESPONDENT: State of Chhattisgarh, Through Police Station Takhatpur, Distt. Bilaspur (C.G.).

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

24-7-2007:-

Shri Sachin Singh Rajput, counsel for the appellant.

Shri Satish Gupta, Deputy Govt. Advocate for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 14th August, 2001 passed by the 4th Additional Sessions Judge, Bilaspur, in S.T. No.477/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo

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imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.

The case of the prosecution is that in the intervening night of 11/12-9-2000 deceased Janki, accused Dukhuram, their daughter PW-7 Lalita, PW-8 Devi Kumar, PW-11 Santram, father of the deceased, and PW-3 Dinesh Kumar were sleeping in the house of the accused on the ground in the same room after taking their dinner. In the night, the accused went out of the room saying that he is going to attend the call of nature. The door of the room was open, street light and light of the shop in front of the room were on. The accused brought a stone and threw it on the head of Janki, as a result of which she sustained injury which was seen by PW-7 Lalita, PW-8 Devi Kumar and PW-11 Santram. Next day morning, Janki was taken to the Primary Health Centre, Takhatpur. Dehati Nalishi Ex.P/15 was lodged in the Police Station Takhatpur. Based on that, First Information Report Ex.P/16 was registered for commission of offence under Section 307 of the I.P.C. Janki was taken to the hospital where Dr. V.K. Soni (PW-1) examined her injures and gave treatment. He prepared injury report Ex.P/1. He referred Janki to the Bilaspur Hospital. During treatment, Janki succumbed to the head injury on 13-9-2000 at 6.30 a.m. Merg intimation Ex.P/5 was given to the City Kotwali, Bilaspur, which was sent under Ex.P/6 to the Police Station Takhatpur.

The investigating officer left for the hospital, after giving notice Ex.P/8 to the Panchas, prepared inquest EX.P/9 on the body of the deceased. The body of the deceased was sent for post-mortem examination to the Assistant Surgeon, Dharam Hospital, Bilaspur under

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Ex.P/11 where Dr. S.S. Bhatia (PW-12) conducted post-mortem on the body of the deceased, prepared post-mortem report Ex.P/22 and opined that cause of death was coma due to injuries sustained over head. While in the police custody, the accused gave memorandum Ex.P/18, in pursuance of that, stone, weapon of offence, was seized under Ex.P/19. The stone was sent for examination to the Assistant Surgeon, Government Hospital, Bilaspur, who in turn, gave report Ex.P/23 and it was opined that injuries found on the head of the deceased could be caused by the said stone.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 12 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence and stated that he has been falsely implicated at the behest of Ramswaroop and Bhagwan Singh.

After hearing learned counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the accused as aforesaid.

We have heard Shri Sachin Singh Rajput, counsel for the appellant and Shri Satish Gupta, Deputy Govt. Advocate for the State/respondent.

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Learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Moreover, PW-7 Lalita, daughter of the accused and PW-8 Devi Kumar, son of the accused, have categorically stated that their father attacked their mother with stone on her head, as a result of which she sustained injuries and later on, she died. PW-12 Dr. S.S. Bhatia, who conducted post-mortem on the body of the deceased, has stated that on 13-9-2000 he conducted postmortem and found that there was injury on temporal region of the head in the size of 6 x 5 cm. There was fracture of temporal and frontal bone. Blood was clotted in sub-dural region. Cause of death was coma due to injury sustained on head. Therefore, in view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-7 Lalita and PW-8 Devi Kumar, daughter and son of the accused, have categorically stated that in fateful night they were sleeping by the side of their mother. The accused went outside of the room saying that he is going to attend the call of nature. He brought grinding stone and threw it on the head of their mother. They were able to see the act of the accused in a street light and shop light. In cross-examination of these witnesses, defence has not been able to elicit any circumstance which makes evidence of these witnesses unreliable or untrustworthy. PW-11 Santram, father of the deceased, has also corroborated the evidence of these two witnesses. He has stated that on the fateful day he came to meet his daughter. He was also sleeping on the ground in the same room where the deceased was sleeping. The accused attacked the deceased

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with a grinding stone. Dehati Nalishi Ex.P/15 was lodged by PW-8 Devi Kumar, ~~who~~ also corroborates the evidence of PW-7 Lalita. He has stated that the accused/appellant was the person who attacked the deceased with grinding stone. Therefore, from the above evidence and discussion, we are of the considered opinion that the accused was author of the crime in question and to that extent, there is no illegality or infirmity in the finding of the trial Court.

Learned counsel for the accused/appellant submitted that in this case there is no evidence to show that the accused attacked the deceased with intention to cause her death. In fact, it is evident from the evidence of PW-7 Lalita that when the accused threw stone, it first hit the table lying there and thereafter it fell on the head of the deceased. Therefore, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused evidence available on record. There is nothing on record to show that the accused attacked the deceased with intention to cause her death. PW-7 Lalita has stated that her parents i.e. mother and father used to live in a peaceful manner and there was no dispute or quarrel between them. Even there is no evidence that what was the motive behind the attack made by the accused. Moreover, the deceased was not taken to the hospital in the same night. She was taken next day morning to the

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	hospital and she died on 13-9-2000 about 30 hours after the attack made by the accused. In the circumstances, the prosecution has not been able to establish that the accused attacked the deceased with intention to cause her death. Therefore, offence against the accused under Section 304 Part-II of the IPC is made out. In the result, the appeal of the appellant partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside, instead thereof, he is convicted under Section 304 Part-II of the IPC and sentenced to undergo R.I. for 7 years. It is stated that the accused is in detention since 13-9-2000 till today. The accused shall be entitled for set off of the said detention period against sentence imposed upon him. Sd/- L.C. BHADOO Judge	Sd/- SUNIL KUMAR SINHA Judge
Barve		

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